IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18975 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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ASHOKKUMAR KANTILAL NIRMAL & 2 - Petitioners
Versus
CHANABHAI BHAVAN & 1 - Respondent(s)

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Appearance :
MR ANSHIN H DESAI for Petitioners.
MR SUNIL L MEHTA for Respondent No. 1.
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 22/11/2006

ORAL JUDGMENT

1. The petitioners – original defendant Nos. 1 to 3 have filed this petition under Article 227 of the Constitution of India challenging the order dated 03.01.2005 passed below an application Exh. 31 by the learned 4th Civil Judge (J.D.), Rajkot in Special Civil Suit No. 56 of 2001 transposing the original defendant No. 4 to plaintiff No. 2.

2. This Court has issued notice on 16.09.2005 and directed the lower Court not to decide the suit in question finally till the returnable date.

3. The petition was thereafter admitted and rule was issued. Ad-interim relief granted earlier was continued from time to time and it was thereafter ordered to be continued till further order on 27.02.2006.

4. Pursuant to the rule issued by this Court, Mr. Sunil L. Mehta, learned advocate has filed his appearance and affidavit-in-reply was filed on 21.11.2006.

5. Heard Mr. Anshin H. Desai, learned advocate appearing for the petitioners and Mr. Sunil L. Mehta, learned advocate appearing for the respondent No.1. Despite service of notice, nobody appears on behalf of respondent No. 2.

6. Perused the memo of petition as well as affidavit-in-reply along with the documents attached therewith. The Court has heard learned advocates appearing for the respective parties at great length. The Court is, however, not inclined to interfere in the order passed by the Learned Trial Judge and when the Court is about to dictate the order, Mr. Desai has submitted that he did not want any detailed order assigning reasons for dismissal of the petition. He, however, has submitted that liberty be reserved to the petitioners to raise all these contentions, more particularly, the contentions regarding limitation,

cause of action and ex-parte proceedings against the respondent No. 1 – original defendant No. 4 sought to be converted into by-parte proceedings as well as pendency of application under Order XXXVII, Rule 4 and Appeal From order etc. while filing the additional written statement to the amended plaint transposing original defendant No. 4 to plaintiff No.2.

7. In view of the aforesaid submission made by Mr. Desai, the Court hereby refuses to interfere in the impugned order passed by the Learned Trial Judge and permits the present petitioners to raise all the aforesaid issues at the time of filing additional written statement to the amended plaint.

8. Subject to the aforesaid observation, the petition is accordingly dismissed. Rule is discharged without any order as to costs. Interim relief granted earlier stands vacated.

[K.A. PUJ, J.]